

As of January 1, 2002

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NEW JERSEY STATUTES

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1. GENERAL PROVISIONS RELATING TO ALL PROFESSIONS AND OCCUPATIONS AFFECTED BY THIS SUBTITLE

45:1–1. Persons entitled to practice, etc. under former laws unaffected

Any person now entitled to practice any profession or to engage in any occupation, governed or regulated by the provisions of this title by virtue of any prior law, shall continue to be entitled to practice or engage in the same, notwithstanding the enactment of this title, and the validity of any license or other authorization to practice any such profession or to engage in any such occupation, heretofore issued to any person under any prior law, or of any proceeding pending to obtain such a license or authorization shall not be affected by the enactment of this title but all such persons shall in all other respects be subject to the provisions of this title.

ARTICLE 2. GENERAL PROVISIONS RELATING TO CERTAIN STATE BOARDS OF REGISTRATION AND EXAMINATION

45:1–2. Repealed by L.1971, c. 60, § 5, eff. March 25, 1971

45:1–2.1. Professional boards and commissions; application of act

The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, and the State Board of Public Movers and Warehousemen.

45:1–2.2. Appointment of members by governor; public members; member from department in executive branch; quorum; vote necessary for action

a. All members of the several professional boards and commissions shall be appointed by the Governor in the manner prescribed by law; except in appointing members other than those appointed pursuant to subsection b. or subsection c., the Governor shall give due consideration to, but shall not be bound by, recommendations submitted by the appropriate professional organizations of this State.

b. In addition to the membership otherwise prescribed by law, the Governor shall appoint in the same manner as presently prescribed by law for the appointment of members, two additional members to represent the interests of the public, to be known as public members, to each of the following boards and commissions: The New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Social Work Examiners, and the State Board of Veterinary Medical Examiners, and one additional public member to each of the following boards: the Board of Examiners of Electrical

Contractors, the State Board of Marriage and Family Therapy Examiners, the State Board of Examiners of Master Plumbers, and the State Real Estate Appraiser Board. Each public member shall be appointed for the term prescribed for the other members of the board or commission and until the appointment of his successor. Vacancies shall be filled for the unexpired term only. The Governor may remove any such public member after hearing, for misconduct, incompetency, neglect of duty or for any other sufficient cause.

No public member appointed pursuant to this section shall have any association or relationship with the profession or a member thereof regulated by the board of which he is a member, where such association or relationship would prevent such public member from representing the interest of the public. Such a relationship includes a relationship with members of one's immediate family; and such association includes membership in the profession regulated by the board. To receive services rendered in a customary client relationship will not preclude a prospective public member from appointment. This paragraph shall not apply to individuals who are public members of boards on the effective date of this act.

It shall be the responsibility of the Attorney General to insure that no person with the aforementioned association or relationship or any other questionable or potential conflict of interest shall be appointed to serve as a public member of any board regulated by this section.

Where a board is required to examine the academic and professional credentials of an applicant for licensure or to test such applicant orally, no public member appointed pursuant to this section shall participate in such examination process; provided, however, that public members shall be given notice of and may be present at all such examination processes and deliberations concerning the results thereof, and, provided further, that public members may participate in the development and establishment of the procedures and criteria for such examination processes.

c. The Governor shall designate a department in the Executive Branch of the State Government which is closely related to the profession or occupation regulated by each of the boards or commissions designated in section 1 of P.L.1971, c. 60 (C. 45:1-2.1) and shall appoint the head of such department, or the holder of a designated office or position in such department, to serve without compensation at the pleasure of the Governor as a member of such board or commission.

d. A majority of the voting members of such boards or commissions shall constitute a quorum thereof and no action of any such board or commission shall be taken except upon the affirmative vote of a majority of the members of the entire board or commission.

45:1-2.3. Qualifications; rights and duties

Such additional members:

a. Need not meet the educational and professional requirements for membership on such boards or commissions as provided in the several statutes establishing such boards and commissions; and

b. Shall be voting members subject to the same rights, obligations and duties as other members of their respective boards or commissions.

45:1-2.4. Effect of act on term of member in office

Nothing in this act shall affect the right of a board or commission member in office on the effective date of this act to continue to serve for the term for which he was appointed.

45:1-2.5. Compensation and reimbursement of expenses of members; executive secretaries; compensation and terms of employment; offices and meeting places

With respect to the boards or commissions designated in section 1 of P.L.1971, c. 60 (C.45:1-2.1), except as otherwise provided in subsection d. of this section, and notwithstanding the provisions of any other law:

a. The officers and members shall be compensated on a per diem basis in the amount of \$25.00 or an amount to be determined by the Attorney General, with the approval of the State Treasurer, but not to exceed \$100.00 per diem or \$2,500.00 annually, and shall be reimbursed for actual expenses reasonably incurred in the

performance of their official duties. Such moneys shall be paid according to rules and regulations promulgated by the Attorney General.

b. The executive secretary shall receive such salary as shall be determined by the appointing authority within the limits of available appropriations and shall serve at its pleasure. Any such executive secretary who holds a certificate, license or registration issued by the board or commission by which he is employed shall not during such employment be permitted to engage in any profession or occupation regulated by the board or commission.

c. The head of the department to which such board or commission is assigned shall maintain within any public building, whether owned or leased by the State, suitable quarters for the board's or commission's office and meeting place, provided that no such office or meeting place shall be within premises owned or occupied by an officer or member of such board or commission.

d. The compensation schedule for members of boards and commissions provided in subsection a. of this section shall not apply to the members of the New Jersey Real Estate Commission, who shall be compensated pursuant to R.S.45:15-6 or to members of the State Board of Medical Examiners who shall receive compensation of \$150 per diem.

45:1-2.6. Inapplicability of act to rights under civil service or any pension law or retirement system

Nothing in this act shall deprive any person of any tenure rights or of any right or protection provided him by Title 11 of the Revised Statutes, Civil Service, or any pension law or retirement system.

45:1-3. Expenses of boards paid from income; surplus paid to state treasurer; accounts

Each member of the boards mentioned in section 45:1-2 of this title shall be entitled to his actual traveling and other expenses incurred in the performance of his duties, which sum shall be paid from the license fees and other sources of income of such boards. Such boards shall also be entitled to expend from their income such sums as shall be necessary to defray all proper expenses incurred by them in the performance of their duties, including the compensation of any of their officers or agents whom they are authorized to compensate. Such boards, if authorized to collect an annual registration or license fee from persons licensed by them, may retain in their treasuries the fees so collected and use the same for the purpose of defraying the expenses of securing evidence against and prosecuting persons violating the provisions of the laws with the enforcement of which they are charged, or, in case the revenue of the boards from other sources shall be insufficient to pay the salary of their secretaries and their other expenses, such fees may be expended for such purposes. Such boards shall be entitled to retain, in addition to the above, at least one hundred dollars in their treasuries for the purpose of preparing and holding their examinations. On or before October thirty-first in each year such boards shall pay to the state treasurer all moneys remaining in their treasuries, except as above stated, which sum, when so paid, shall form a part of the state fund. Such boards shall keep accurate accounts of their receipts and expenditures, which accounts shall be subject to audit by the state comptroller.

45:1-3.1. Application of act

The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, and the State Board of Social Work Examiners.

45:1-3.2. Charges for examinations, licensures and other services; establishment or change by rule; standards

Notwithstanding the provisions of Title 45 of the Revised Statutes or any other law to the contrary, any board or commission named in section 1 of this supplementary act may by rule establish, prescribe or change the charges for examinations, licensures and other services it performs, which rule shall first be approved by the head of the department to which such board or commission is assigned and shall be adopted in accordance with the provisions of the “Administrative Procedure Act,” P.L.1968, c. 410 (C. 52:14B–1).

Any board’s or commission’s charges established, prescribed or changed pursuant to this section shall be established, prescribed or changed to such extent as shall be necessary to defray all proper expenses incurred by the board or commission in the performance of its duties but such charges shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

45:1–3.3. Administrative fees charged by boards; modification

The Director of the Division of Consumer Affairs may by rule establish, prescribe, or modify administrative fees charged by boards in accordance with the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B–1 et seq.). For purposes of this section, “administrative fees” are charges assessed to licensees, registrants or holders of certificates, as the case may be, for board functions that are not unique to a particular board but are uniform throughout all boards. Administrative fees include, but are not limited to, fees for a duplicate or replacement license, certification or registration, late renewal fee, license reinstatement fee, and the fee for processing change of address.

45:1–4. Salary of secretary

The secretary of each of the boards mentioned in section 45:1–2 of this title, whether or not a member thereof, shall be entitled to receive such reasonable salary or compensation for his services as secretary as shall be fixed by such boards, which shall be paid by the boards from their receipts, unless an appropriation is made for the expenses of such boards, in which case the same shall be paid from such appropriation.

45:1–5, 45:1–6. Repealed by L.1979, c. 432, § 4, eff. Feb. 14, 1980

45:1–7. Professional or occupational licenses or certificates of registration; duration; expiration; exceptions; fees

Notwithstanding any of the provisions of Title 45 of the Revised Statutes or of any other law to the contrary, all professional or occupational licenses or certificates of registration, except such licenses or certificates issued to real estate brokers or salesmen pursuant to chapter 15 of Title 45, which prior to the effective date of this act were issued for periods not exceeding one year and were annually renewable, shall, on and after the effective date of this act, be issued for periods of two years and be biennially renewable, except that licenses and business permits issued to electrical contractors and certificates of registration issued to qualified journeymen electricians pursuant to chapter 5A of Title 45 shall be issued for periods of three years and be triennially renewable; provided, however, the boards or commissions in charge of the issuance or renewal of such licenses or certificates may, in order to stagger the expiration dates thereof, provide that those first issued or renewed after the effective date of this act, shall expire and become void on a date fixed by the respective boards or commissions, not sooner than six months nor later than 29 months, after the date of issue.

The fees for the respective licenses and certificates of registration issued pursuant to this act for periods of less or greater than one year shall be in amounts proportionately less or greater than the fees established by law.

45:1–7.1. Application to holders of professional or occupational licenses

a. Notwithstanding any other act or regulation to the contrary, the provisions of this section and sections 6 and 7 of P.L.1999, c. 403 (C.45:1–7.2 et al.) shall apply to every holder of a professional or occupational license or certificate of registration or certification issued or renewed by a board specified in section 2 of P.L. 1978, c. 73 (C.45:1–15), who seeks renewal of that license or certificate.

b. Every holder of a professional or occupational license or certificate of registration or certification, issued or renewed by a board specified in section 2 of P.L.1978, c. 73 (C.45:1–15), who seeks renewal shall submit

a renewal application and pay a renewal fee prior to the date of expiration of the license or certificate of registration or certification. If the holder does not renew the license or certificate prior to its expiration date, the holder may renew it within 30 days of its expiration date by submitting a renewal application and paying a renewal fee and a late fee. Any professional or occupational license or certificate of registration or certification not renewed within 30 days of its expiration date shall be suspended without a hearing.

c. Any individual who continues to practice with an expired license or certificate of registration or certification after 30 days following its expiration date shall be deemed to be engaged in unlicensed practice of the regulated profession or occupation, even if no notice of suspension has been provided to the individual.

d. A professional or occupational license or certificate of registration or certification suspended pursuant to this section may be reinstated within five years following its date of expiration upon submission of a renewal application and payment of an additional reinstatement fee. An applicant seeking reinstatement of a license or certificate suspended pursuant to this section more than five years past its expiration date shall successfully complete the examination required for initial licensure, registration or certification and submit a renewal application and payment of an additional reinstatement fee.

e. A board specified in section 2 of P.L. 1978, c. 73 (C. 45:1–15) shall send a notice of renewal to each of its holders of a professional or occupational license or certificate of registration or certification, as applicable, at least 60 days prior to the expiration of the license or certificate. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for failure to renew.

45:1–7.2. Reinstatement

A board may reinstate the professional or occupational license or certificate of registration or certification of an applicant whose license or certificate has been suspended pursuant to section 5 of P.L.1999, c. 403 (C.45:1–7.1), provided that the applicant otherwise qualifies for licensure, registration or certification and submits the following upon application for reinstatement:

- a. Payment of all past delinquent renewal fees;
- b. Payment of a reinstatement fee;
- c. An affidavit of employment listing each job held during the period of suspended license, registration or certification which includes the names, addresses, and telephone numbers of each employer; and
- d. If applicable, satisfactory proof that the applicant has maintained proficiency by completing the continuing education hours or credits required for the renewal of an active license or certificate of registration or certification.

45:1–7.3. Renewal applications

a. Renewal applications for all professional or occupational licenses or certificates of registration or certification shall provide the applicant with the option of either active or inactive renewal. A renewal applicant electing to renew as inactive shall not engage in professional or occupational practice within the State.

b. An applicant who selects the inactive renewal option shall remain on inactive status for the entire renewal period unless, upon application to the board, the board permits the inactive applicant to return to active status provided such applicant presents satisfactory proof that he has maintained proficiency by completing the continuing education hours or credits required for the renewal of an active license, registration or certification, if applicable.

45:1–8. Contractors; application of § 45:1–9

The provisions of this act apply to the following classes of contractors:

- a. Tree experts, certified pursuant to P.L.1940, c. 100 (C. 13:1–28 et seq.);
- b. Home repair contractors, licensed pursuant to P.L.1960, c. 41 (C. 17:16C–62 et seq.);
- c. Electrical contractors, licensed pursuant to P.L.1962, c. 162 (C. 45:5A–1 et seq.);
- d. Master plumbers, licensed pursuant to P.L.1968, c. 362 (C. 45:14C–1 et seq.);
- e. Well drillers, licensed pursuant to P.L.1947, c. 377 (C. 58:4A–5 et seq.); and
- f. Any class of contractors who hereafter are licensed by the State.

45:1–9. Indication of license or certificate number on contracts, bids and advertisements

Any contractor licensed by the State shall indicate his license or certificate number on all contracts, subcontracts, bids and all forms of advertising as a contractor.

45:1–10. Disclosure of laboratory payments on bills to patients and third party payors

It shall be unlawful for any person licensed in the State of New Jersey to practice medicine or surgery, dentistry, osteopathy, podiatry or chiropractic to agree with any clinical, bio-analytical or hospital laboratory, wheresoever located, to make payments to such laboratory for individual tests, combination of tests, or test series for patients unless such person discloses on the bills to patients and third party payors the name and address of such laboratory and the net amount or amounts paid or to be paid to such laboratory for individual tests, combination of tests or test series.

45:1–10.1. Claims for third party payment; licensed health care professional ; responsibility for filing

Effective 12 months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c. 154 (C.17B:30–23), a health care professional licensed pursuant to Title 45 of the Revised Statutes is responsible for filing all claims for third party payment, including claims filed on behalf of the licensed professional’s patient for any health care service provided by the licensed professional that is eligible for third party payment, except that at the patient’s option, the patient may file the claim for third party payment.

a. In the case of a claim filed on behalf of the professional’s patient, the professional shall file the claim within 60 days of the last date of service for a course of treatment, on the standard claim form adopted by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c. 154 (C.17B:30–23).

b. In the case of a claim in which the patient has assigned his benefits to the professional, the professional shall file the claim within 180 days of the last date of service for a course of treatment, on the standard claim form adopted by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c. 154 (C.17B:30–23). If the professional does not file the claim within 180 days of the last date of service for a course of treatment, the third party payer shall reserve the right to deny payment of the claim, in accordance with regulations established by the Commissioner of Banking and Insurance, and the professional shall be prohibited from seeking any payment directly from the patient.

(1) In establishing the standards for denial of payment, the Commissioner of Banking and Insurance shall consider the good faith use of information provided by the patient to the professional with respect to the identity of the patient’s third party payer, delays in filing a claim related to coordination of benefits between third party payers and any other factors the commissioner deems appropriate, and, accordingly, shall define specific instances where the sanctions permitted pursuant to this subsection shall not apply.

(2) A professional who fails to file a claim within 180 days and whose claim for payment has been denied by the third party payer in accordance with this subsection may, in the discretion of a judge of the Superior Court, be permitted to refile the claim if the third party payer has not been substantially prejudiced thereby. Application to the court for permission to refile a claim shall be made within 14 days of notification of denial of payment and shall be made upon motion based upon affidavits showing sufficient reasons for the failure to file the claim with the third party payer within 180 days.

c. The provisions of this section shall not apply to any claims filed pursuant to P.L.1972, c. 70 (C.39:6A–1 et seq.).

d. A health care professional who violates the provisions of subsection a. of this section may be subject to a civil penalty of \$250 for each violation plus \$50 for each day after the 60th day that the provider fails to submit a claim. The penalty shall be sued for and collected by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to “the penalty enforcement law,” N.J.S.2A:58–1 et seq.

45:1–11. Violations; penalty

Any person violating this act shall be guilty of a misdemeanor.

45:1–12. Podiatrist, optometrist or psychologist or professional service corporation; charge for completion of claim form for health insurance; fine; collection and enforcement

No podiatrist, optometrist or psychologist and no professional service corporation engaging in the practice of podiatry, optometry or psychology in this State shall charge a patient an extra fee for services rendered in completing a medical claim form in connection with a health insurance policy. Any person violating this act shall be subject to a fine of \$100.00 for each offense.

Such penalty shall be collected and enforced by summary proceedings pursuant to the Penalty Enforcement Law (N.J.S. 2A:58–1 et seq.). The Superior Court and municipal court shall have jurisdiction within its territory of such proceedings. Process shall be either in the nature of a summons or warrant and shall issue in the name of the State, upon the complaint of the State Board of Medical Examiners with respect to podiatrists, the New Jersey State Board of Optometry for optometrists or the State Board of Psychological Examiners for psychologists.

45:1–13. Repealed by L.1999, c. 403, § 12, eff. Jan. 18, 2000

45:1–14. Legislative findings and declarations; liberal construction of act

The Legislature finds and declares that effective implementation of consumer protection laws and the administration of laws pertaining to the professional and occupational boards located within the Division of Consumer Affairs require uniform investigative and enforcement powers and procedures and uniform standards for license revocation, suspension and other disciplinary proceedings by such boards. This act is deemed remedial, and the provisions hereof should be afforded a liberal construction.

45:1–15. Boards and professions or occupations regulated by or through such boards; application of act

The provisions of this act shall apply to the following boards and all professions or occupations regulated by, through or with the advice of those boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, the State Board of Physical Therapy, the Professional Counselor Examiners Committee, the New Jersey Cemetery Board, the Orthotics and Prosthetics Board of Examiners, the Occupational Therapy Advisory Council, the Electrologists Advisory Committee, the Alcohol and Drug Counselor Committee, the Fire Alarm, Burglar Alarm, and Locksmith Advisory Committee, the Home Inspection Advisory Committee, the Massage, Bodywork and Somatic Therapy Examining Committee, and the Audiology and Speech–Language Pathology Advisory Committee.

45:1–15.1. Rules and regulations

Consistent with their enabling acts, P.L.1978, c. 73 (C.45:1–14 et seq.) and the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B–1 et seq.), the boards and others set forth in section 2 of P.L.1978, c. 73 (C.45:1–15) are authorized to adopt rules and regulations to serve the public health, safety and welfare.

45:1–16. Definitions

As used within this act the following words or terms shall have the indicated definition unless the context clearly indicates otherwise.

“Board” means any professional or occupational licensing board designated in section 2 of this act.

“Director” means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

“Person” means any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trust thereof.

45:1–17. Powers of Attorney General to implement act and administer law enforcement activities of boards

In implementing the provisions of this act and administering the law enforcement activities of those professional and occupational boards located within the Division of Consumer Affairs, the Attorney General may:

a. After advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice, promulgate rules and regulations consistent with the provisions of this act and the Administrative Procedure Act, P.L.1968, c. 410 (C. 52:14B–1 et seq.) governing the procedure for administrative hearings before all boards within the Division of Consumer Affairs. Such rules and regulations shall govern administrative complaints, answers thereto, issuance of subpoenas, appointment of hearing examiners, adjournments, submission of proposed findings of fact and conclusions of law, the filing of briefs, and such other procedural aspects of administrative hearings before the boards as the Attorney General may deem necessary; provided, however, nothing herein authorized shall be construed to require the Attorney General to promulgate rules regarding prehearing investigative procedures.

b. After advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice, promulgate substantive rules and regulations consistent with the provisions of any statute governing the activities of any licensing agency, board or committee located within the Division of Consumer Affairs, which shall be limited to disciplinary matters and arbitrary restrictions on initial licensure. In addition to promulgating such rules and regulations, the Attorney General may direct that any proposed or existing regulation be amended, abandoned or repealed. Prior to the final adoption of any regulation affecting the activities of any professional or occupational licensing agency, board or committee located within the division and prior to the issuance of any directive to amend, abandon or repeal any regulation, the Attorney General or his designee shall first consult with the agency, board or committee whose activities are affected regarding the proposed action.

c. After a full consideration of all relevant facts and the applicable law, may direct the initiation of any appropriate enforcement action by a professional or occupational licensing board or set aside, modify or amend, as may be necessary, any action or decision of a licensing agency, board or committee located within the Division of Consumer Affairs; provided, however, no such action shall be directed by the Attorney General in reviewing the action or decision of an agency, board or committee unless such action or decision is contrary to applicable law.

45:1–18. Investigative powers of boards, director or attorney general

Whenever it shall appear to any board, the director or the Attorney General that a person has engaged in, or is engaging in any act or practice declared unlawful by a statute or regulation administered by such board, or when the board, the director or the Attorney General shall deem it to be in the public interest to inquire whether any such violation may exist, the board or the director through the Attorney General, or the Attorney General acting independently, may exercise any of the following investigative powers:

a. Require any person to file on such form as may be prescribed, a statement or report in writing under oath, or otherwise, as to the facts and circumstances concerning the rendition of any service or conduct of any sale incidental to the discharge of any act or practice subject to an act or regulation administered by the board;

b. Examine under oath any person in connection with any act or practice subject to an act or regulation administered by the board;

c. Inspect any premises from which a licensed profession or occupation is conducted;

d. Examine any goods, ware or item used in the rendition of any professional or occupational service;

e. Examine any record, book, document, account or paper maintained by or for any professional or occupational licensee in the regular course of practicing such profession or engaging in such occupation;

f. For the purpose of preserving evidence of an unlawful act or practice, pursuant to an order of the Superior Court, impound any record, book, document, account, paper, goods, ware, or item used or maintained by or for any board licensee in the regular course of practicing such profession or engaging in such occupation. In

such cases as may be necessary, the Superior Court may, on application of the Attorney General, issue an order sealing items or material subject to this subsection.

In order to accomplish the objectives of this act or any act or regulation administered by a board, the Attorney General may hold such investigative hearings as may be necessary and may issue subpoenas to compel the attendance of any person or the production of books, records or papers at any such hearing or inquiry.

45:1–19. Failure or refusal to file statement or report, refusal of access to premises or failure to obey subpoena; penalty

If any person shall fail or refuse to file any statement or report or refuse access to premises from which a licensed profession or occupation is conducted in any lawfully conducted investigative matter or fail to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:

- a. Adjudging such person in contempt of court; or
- b. Granting such other relief as may be required; or
- c. Suspending the license of any such person unless and until compliance with the subpoena or investigative demand is effected.

45:1–20. Compelling testimony or production of book, paper or document; immunity from prosecution

If any person shall refuse to testify or produce any book, paper, or other document in any proceeding under this act for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, convict him of a crime, or subject him to a penalty or forfeiture, and shall, notwithstanding, be directed to testify or to produce such book, paper, or document by the Attorney General, he shall comply with such direction.

A person who is entitled by law to, and does assert such privilege, and who complies with such direction of the Attorney General shall not thereafter be prosecuted or subjected to any penalty or forfeiture in any criminal proceeding which arises out of and relates to the subject matter of the proceeding. No person so testifying shall be exempt from prosecution or punishment for perjury or false swearing committed by him in giving such testimony or from any civil or administrative action arising from such testimony.

45:1–21. Grounds for refusal to admit to examination or denial, suspension or revocation of any certificate, registration or license; definitions

A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:

- a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
- b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- c. Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- e. Has engaged in professional or occupational misconduct as may be determined by the board;
- f. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;
- g. Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;
- h. Has violated or failed to comply with the provisions of any act or regulation administered by the board;

i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;

j. Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection;

k. Has violated any provision of P.L.1983, c. 320 (C.17:33A-1 et seq.) or any insurance fraud prevention law or act of another jurisdiction or has been adjudicated, in civil or administrative proceedings, of a violation of P.L.1983, c. 320 (C.17:33A-1 et seq.) or has been subject to a final order, entered in civil or administrative proceedings, that imposed civil penalties under that act against the applicant or holder;

l. Is presently engaged in drug or alcohol use that is likely to impair the ability to practice the profession or occupation with reasonable skill and safety. For purposes of this subsection, the term "presently" means at this time or any time within the previous 365 days;

m. Has prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution;

n. Has permitted an unlicensed person or entity to perform an act for which a license or certificate of registration or certification is required by the board, or aided and abetted an unlicensed person or entity in performing such an act;

o. Advertised fraudulently in any manner.

For purposes of this act:

"Completed application" means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L.1991, c. 421 (C.13:1D-101), for the class or category of permit for which application is made.

"Permit" has the same meaning as defined in section 1 of P.L.1991, c. 421 (C.13:1D-101).

45:1-21.1. Annual summary of compliance information and attendance at continuing education seminars; costs; information deemed public records

a. A board obtaining information from the Department of Environmental Protection pursuant to section 1 of P.L.1991, c. 418 (C. 13:1D-110) on the compliance of a member of a regulated profession with the requirements for completed applications of the department, shall annually develop a detailed written summary of the information gathered by the department pursuant to P.L.1991, c. 418 (C. 13:1D-110) regarding compliance with the department's requirements for completed applications and attendance records for continuing education seminars required to be filed with the department pursuant to section 2 of P.L.1991, c. 419 (C. 13:1D-117).

b. Any reasonable costs incurred in preparation of the report required pursuant to this section may be included in the charges authorized pursuant to P.L.1974, c. 46 (C. 45:1-3.2).

c. Information required to be compiled by a board pursuant to this section, shall be deemed to be public records subject to the requirements of P.L.1963, c. 73 (C. 47:1A-1 et seq.).

45:1-21.2. Suspension of certain licenses; hearing

The director or a board shall suspend, as appropriate, after a hearing, the license, registration or certification of any person who has been certified by a lender or guarantor and reported to the director or the board, as the case may be, for nonpayment or default of a State or federal direct or guaranteed educational loan. The license, registration or certification shall not be reissued until the person provides the director or board with a written release issued by the lender or guarantor stating that the person has cured the default or is making payments on the loan in accordance with a repayment agreement approved by the lender or guarantor. If the person has continued to meet all other requirements for licensure, registration or certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director or the board may impose.

45:1–22. Additional or alternative penalties to revocation, suspension or refusal to renew; temporary order suspending or limiting license; subpoena

In addition or as an alternative, as the case may be, to revoking, suspending or refusing to renew any license, registration or certificate issued by it, a board may, after affording an opportunity to be heard:

- a. Issue a letter of warning, reprimand, or censure with regard to any act, conduct or practice which in the judgment of the board upon consideration of all relevant facts and circumstances does not warrant the initiation of formal action;
- b. Assess civil penalties in accordance with this act;
- c. Order that any person violating any provision of an act or regulation administered by such board to cease and desist from future violations thereof or to take such affirmative corrective action as may be necessary with regard to any act or practice found unlawful by the board;
- d. Order any person found to have violated any provision of an act or regulation administered by such board to restore to any person aggrieved by an unlawful act or practice, any moneys or property, real or personal, acquired by means of such act or practice; provided, however, no board shall order restoration in a dollar amount greater than those moneys received by a licensee or his agent or any other person violating the act or regulation administered by the board;
- e. Order any person, as a condition for continued, reinstated or renewed licensure, to secure medical or such other professional treatment as may be necessary to properly discharge licensee functions.

A board may, upon a duly verified application of the Attorney General that either provides proof of a conviction of a court of competent jurisdiction for a crime or offense involving moral turpitude or relating adversely to the regulated profession or occupation, or alleges an act or practice violating any provision of an act or regulation administered by such board, enter a temporary order suspending or limiting any license issued by the board pending plenary hearing on an administrative complaint; provided, however, no such temporary order shall be entered unless the application made to the board palpably demonstrates a clear and imminent danger to the public health, safety and welfare and notice of such application is given to the licensee affected by such order.

In any administrative proceeding commenced on a complaint alleging a violation of an act or regulation administered by a board, such board may issue subpoenas to compel the attendance of witnesses or the production of books, records, or documents at the hearing on the complaint.

45:1–23. Summary proceeding in Superior Court; injunction; orders necessary to prevent unlawful practice or remedy past unlawful activity

Whenever it shall appear to a board, the director or the Attorney General that a violation of any act, including the unlicensed practice of the regulated profession or occupation, or regulation administered by such board has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting such act or practice. In any such proceeding the court may assess a civil penalty in accordance with the provisions of this act, order restoration to any person in interest of any moneys or property, real or personal, acquired by means of an unlawful act or practice and may enter such orders as may be necessary to prevent the performance of an unlawful practice in the future and to fully remedy any past unlawful activity. In any action brought pursuant to this section, the court shall not suspend or revoke any license issued by a board.

45:1–24. Failure to comply with order of board directing payment of penalties or restoration of moneys or property; enforcement

Upon the failure of any person to comply within 10 days after service of any order of a board directing payment of penalties or restoration of moneys or property, the Attorney General or the secretary of such board may issue a certificate to the Clerk of the Superior Court that such person is indebted to the State for the payment of such penalty and the moneys or property ordered restored. A copy of such certificate shall be served upon the person against whom the order was entered. Thereupon the clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted and of the State, a designation of the statute under which the penalty is imposed, the amount of the penalty imposed, and amount of moneys ordered restored, a listing of property ordered restored, and the date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court, and the Attorney General shall have all rights and remedies of

a judgment creditor in addition to exercising any other available remedies. Such entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the board's order.

An action to enforce the provisions of any order entered by a board or to collect any penalty levied thereby may be brought in any municipal court or the Superior Court in summary manner pursuant to the Penalty Enforcement Act, (N.J.S. 2A:58–1 et seq.) and the rules of court governing the collection of civil penalties. Process in such action shall be by summons or warrant, and in the event that the defendant fails to answer such action, the court shall issue a warrant for the defendant's arrest for the purpose of bringing such person before the court to satisfy any order entered.

45:1–25. Violations; civil penalty; action to collect or enforce

Any person who engages in any conduct in violation of any provision of an act or regulation administered by a board shall, in addition to any other sanctions provided herein, be liable to a civil penalty of not more than \$10,000 for the first violation and not more than \$20,000 for the second and each subsequent violation. For the purpose of construing this section, each act in violation of any provision of an act or regulation administered by a board shall constitute a separate violation and shall be deemed a second or subsequent violation under the following circumstances:

- (1) an administrative or court order has been entered in a prior, separate and independent proceeding;
- (2) the person is found within a single proceeding to have committed more than one violation of any provision of an act or regulation administered by a board; or
- (3) the person is found within a single proceeding to have committed separate violations of any provision of more than one act or regulation administered by a board.

b. In lieu of an administrative proceeding or an action in the Superior Court, the Attorney General may bring an action in the name of any board for the collection or enforcement of civil penalties for the violation of any provision of an act or regulation administered by such board. Such action may be brought in summary manner pursuant to "The Penalty Enforcement Law of 1999" (N.J.S.2A:58–1 et seq.) and the rules of court governing actions for the collection of civil penalties in the municipal court where the offense occurred. Process in such action may be by summons or warrant and in the event that the defendant in such action fails to answer such action, the court shall, upon finding an unlawful act or practice to have been committed by the defendant, issue a warrant for the defendant's arrest in order to bring such person before the court to satisfy the civil penalties imposed. In any action commenced pursuant to this section, the court may order restored to any person in interest any moneys or property acquired by means of an unlawful act or practice.

c. Any action alleging the unlicensed practice of a profession or occupation shall be brought pursuant to this section or, where injunctive relief is sought, by an action commenced in the Superior Court. In any action brought pursuant to this act, a board or the court may order the payment of costs for the use of the State, including, but not limited to, costs of investigation, expert witness fees and costs, attorney fees and costs, and transcript costs.

45:1–26. Repeal of inconsistent acts and parts of acts

All acts and parts of acts inconsistent with this act are hereby superseded and repealed.

45:1–27. Severability

If any provision of this law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the law which can be given effect without the invalid provision or application, and to this end the provisions of this law are severable.

CHAPTER 9

MEDICINE AND SURGERY

ARTICLE 2A. PHYSICAL THERAPY

45:9–37.1 to 45:9–37.6. Repealed by L.1983, c. 296, § 25, eff. Jan. 31, 1984

45:9–37.7. Repealed by L.1979, c. 432, § 1, eff. Feb. 14, 1980

45:9–37.8, 45:9–37.9. Repealed by L.1983, c. 296, § 25, eff. Jan. 31, 1984

45:9–37.10. Repealed by L.1979, c. 432, § 1, eff. Feb. 14, 1980

45:9–37.11. Short title

This act shall be known and may be cited as the “Physical Therapist Licensing Act of 1983.”

45:9–37.12. Legislative findings and declarations

The Legislature finds and declares that the public interest requires the regulation of the practice of physical therapy and the establishment of clear licensure standards for physical therapists; and that the health and welfare of the citizens of this State will be protected by identifying to the public those individuals who are qualified and legally authorized to practice physical therapy.

45:9–37.13. Definitions

As used in this act:

- a. “Board” means the State Board of Physical Therapy established pursuant to section 5 of this act.
- b. “Physical therapist” means a person who is licensed to practice physical therapy pursuant to the provisions of this act. A physical therapist shall provide physical therapy treatment to an individual upon the direction of a licensed physician, dentist or other health care practitioner authorized to prescribe treatment.
- c. “Physical therapist assistant” means a person who is licensed pursuant to the provisions of this act and who assists a licensed physical therapist under his direct supervision in accordance with this act.
- d. “Physical therapy” means the health specialty concerned with the prevention of physical disability and the habilitation or rehabilitation of congenital or acquired physical disabilities resulting from, or secondary to, injury or disease.

45:9–37.14. Practice of physical therapy defined

- a. The practice of physical therapy shall include examination, treatment, or instruction to detect, assess, prevent, correct, alleviate and limit physical disability, bodily malfunction and pain from injury, disease or other physical condition.

Physical therapy shall also include the evaluation, administration and modification of treatment and instruction, including, but not limited to, the use of physical measures, activities, agents and devices for preventive and therapeutic purposes; neurodevelopmental procedures; the performance and evaluation of tests and measurements; and the provision of consultative, educational and other advisory services for the purpose of preventing or reducing the incidence and severity of physical disability, bodily malfunction and pain consistent with the practice of physical therapy.

- b. Nothing in this section shall authorize the diagnosis of disease or the practice of medicine and surgery or chiropractic by any person not licensed to do so pursuant to chapter 9 of Title 45 of the Revised Statutes.

- c. Nothing in this section shall authorize the practice of dentistry by any person not licensed to do so pursuant to chapter 6 of Title 45 of the Revised Statutes.

45:9–37.15. State board of physical therapy; members; number; appointment; qualifications; term; vacancies

There is created within the Division of Consumer Affairs in the Department of Law and Public Safety the State Board of Physical Therapy. The board shall consist of 11 members who are residents of the State, two of whom shall be public members and one of whom shall be a State executive department member appointed pursuant to the provisions of P.L.1971, c. 60 (C. 45:1–2.1 et seq.). Of the remaining eight members six shall be licensed physical therapists who have been actively engaged in the practice of physical therapy in this State for at least five years immediately preceding their appointment, one shall be the administrator of a hospital licensed pursuant to P.L.1971, c. 136 (C. 26:2H–1 et seq.) and one shall be a physician licensed to practice medicine and surgery pursuant to chapter 9 of Title 45 of the Revised Statutes.

The Governor shall appoint members to the board with the advice and consent of the Senate. The Governor shall appoint each member for a term of three years, except that of the physical therapist members first appointed, two shall serve for terms of three years, two shall serve for terms of two years and two shall serve for a term of one year. Each member shall hold office until his successor has been qualified. Any vacancy in the membership of the board shall be filled for the unexpired term in the manner provided for the original appointment. No member of the board may serve more than two successive terms in addition to any unexpired term to which he has been appointed.

45:9–37.16. Compensation and reimbursement of expenses

Members of the board shall be compensated and reimbursed for expenses and provided with office and meeting facilities pursuant to section 2 of P.L.1977, c. 285 (C. 45:1–2.5).

45:9–37.17. Officers; meetings

The board shall annually elect from among its members a chairman, vice-chairman and a secretary. The board shall meet twice per year and may hold additional meetings as necessary to discharge its duties.

45:9–37.18. Duties

The board shall:

- a. Review the qualifications of applicants for licensure;
- b. Insure the proper conduct and standards of examinations;
- c. Issue and renew licenses to physical therapists and physical therapist assistants pursuant to this act;
- d. Suspend, revoke or fail to renew the license of a physical therapist or physical therapist assistant pursuant to the provisions of P.L.1978, c. 73 (C. 45:1–14 et seq.);
- e. Maintain a record of every physical therapist and physical therapist assistant licensed in this State, his place of business, his place of residence, and the date and number of his license; and
- f. Promulgate rules and regulations necessary for the performance of its duties and the implementation of this act.

45:9–37.19. License; necessity

No person shall practice physical therapy or act as a physical therapist assistant, whether or not compensation is received or expected, unless he holds a valid license to practice in this State; however, nothing in this section shall be construed to:

- a. Prohibit any student enrolled in a school or post-graduate course of physical therapy recognized by the board from performing physical therapy which is necessary to his course of study;
- b. Prohibit any person licensed to practice in this State under any other law from engaging in the practice for which he is licensed; or

c. Prohibit any person employed by an agency, bureau or division of the Federal Government from practicing physical therapy within the scope of his official duties.

45:9–37.20. Supervision of assistants by physical therapists; limitation on number

No physical therapist shall supervise more physical therapist assistants at any one time than in the opinion of the board can be adequately supervised. Under usual circumstances the maximum number of physical therapist assistants that may be supervised by a physical therapist shall be two, except that, upon application, the board may permit the supervision of a greater number of physical therapist assistants if it feels there would be adequate supervision and the public health and safety would be served.

45:9–37.21. Referrals; fee splitting; prohibition

No physical therapist or physical therapist assistant shall engage directly or indirectly in the division, transferring, assigning, rebating or refunding of fees received for professional services or shall profit by means of a credit or other valuable consideration as an unearned commission, discount or gratuity with any person who refers a patient or with any relative or business associate of the referring person; however, nothing in this section shall be construed to prohibit physical therapists who are members of a business entity, properly organized pursuant to law, from making a division of fees among themselves as determined by contract to be necessary to defray joint operating costs.

45:9–37.22. Eligibility for licensure

To be eligible for licensure as a physical therapist or physical therapist assistant, an applicant shall submit to the board satisfactory evidence that:

a. He has graduated from a program in physical therapy which has been approved for the education and training of physical therapists or physical therapist assistants by an accrediting agency recognized by the Council on Post-Secondary Accreditation and the United States Department of Education; and

b. He has successfully completed a written examination administered by the board to determine his competence to practice physical therapy or to act as a physical therapist assistant.

45:9–37.23. Graduate of foreign school; qualifications for licensure

An applicant for licensure who is a graduate of a foreign school of physical therapy shall furnish evidence satisfactory to the board that:

a. He has completed a course of study in physical therapy which is substantially equivalent to that provided in an accredited program as described in section 12a. of this act; and

b. He has successfully completed a written examination as provided for in section 12b. of this act.

45:9–37.24. Application fees; expiration; renewal

A fee shall accompany each application for licensure. Licenses shall expire biennially on January 31 and may be renewed upon submission of a renewal application provided by the board and payment of a fee. If the renewal fee is not paid by that date, the license shall automatically expire; but may be renewed within two years of its expiration date on payment to the board of a sum determined by it for each year or part thereof during which the license was expired and an additional restoration fee. After a two year period, a license may only be renewed by complying with the provisions of this act regarding initial licensure.

45:9–37.25. Examinations; contents; time and place; notice; additional examinations

The written examination provided for in sections 12 and 13 of this act shall test the applicant's knowledge of basic and clinical sciences as they relate to physical therapy and physical therapy theory and procedures and any other subjects the board may deem useful to test the applicant's fitness to practice physical therapy or act as a

physical therapist assistant. Examinations shall be held within the State at least twice per year at a time and place to be determined by the board. The board shall give adequate written notice of the exam to applicants for licensure and examination.

If an applicant fails his first examination, he may take a second exam not less than six months or more than two years from the date of his initial exam. Additional examinations shall be in accordance with standards set by the board.

45:9–37.26. Assistants; alternate standards for examination

The board may establish alternate standards for the examination of an applicant as a physical therapist assistant.

45:9–37.27. Issuance of license

The board shall issue a license to each applicant for licensure as a physical therapist or physical therapist assistant who qualifies pursuant to this act and any rules and regulations promulgated by the board and who is not disqualified for licensure pursuant to the provisions of P.L.1978, c. 73 (C. 45:1–14 et seq.).

45:9–37.28. Licensee of other state; issuance of license without examination; fee

Upon payment to the board of a fee and the submission of a written application on forms provided by it, the board shall issue without examination a license to a physical therapist or physical therapist assistant who holds a valid license issued by another state or possession of the United States or the District of Columbia which has education and experience requirements substantially equivalent to the requirements of this act; provided, however, the applicant has not previously failed the board exam referred to in section 15 of this act, in which case licensing shall be at the discretion of the board.

45:9–37.29. Temporary licenses

a. Upon submission of a written application on forms provided by it, the board shall issue a temporary license to a person who has applied for licensure pursuant to this act and who, in the judgment of the board, is eligible for examination. A temporary license shall be available to an applicant with his initial application for examination and he may practice only under the direct supervision of a licensed physical therapist. A temporary license shall expire automatically upon failure of the licensure exam but may be renewed for an additional six month period until the date of the next exam at which time it shall automatically expire and be surrendered to the board.

b. Upon payment to the board of a fee and the submission of a written application on forms provided by it, the board may issue without examination a temporary license to practice physical therapy in this State to a person who provides evidence that he is in the State on a temporary basis to assist in a medical emergency or to engage in a special project or teaching assignment relating to physical therapy practice. A temporary license shall expire one year from its date of issue, however, it may be renewed by the board for an additional one year period. A temporary license shall be surrendered to the board upon its expiration.

45:9–37.30. Names, titles and abbreviations indicating practice of physical therapy; use by unlicensed persons; prohibition

No person, business entity or its employees, agents or representatives shall use the titles “physical therapist,” “physiotherapist,” “registered physical therapist,” “licensed physical therapist,” “physical therapist assistant,” “registered physical therapist assistant,” “licensed physical therapist assistant,” “physical therapy assistant,” or the abbreviations “PT,” “RPT,” “LPT,” “PTA,” “RPTA,” “LPTA,” or any other title, designation, words, letters, abbreviations, or insignia indicating the practice of physical therapy unless licensed to practice physical therapy under the provisions of this act.

45:9–37.31. Titles and abbreviations for licensed persons

Any person who holds a license as a physical therapist pursuant to this act may use the title “physical therapist,” or “licensed physical therapist,” or the abbreviations “PT” or “LPT.” Any person who holds a license as a physical therapist assistant pursuant to this act may use the title “physical therapist assistant” or the abbreviations “PTA” or “LPTA”.

45:9–37.32. Registered physical therapists and assistants; continuance of practice and issuance of license; fee

Any person who is registered in this State as a physical therapist or a physical therapist assistant on the effective date of this act may continue to practice physical therapy under his current registration until its expiration, and to obtain a license under this act without examination upon payment of a fee.

45:9–37.33. Orders, rules and regulations of state board of medical examiners; continuance

This act shall not affect the orders, rules and regulations regarding physical therapists or physical therapist assistants made or promulgated by the New Jersey State Board of Medical Examiners consistent with the purposes and provisions of this act which shall continue with full force and effect until amended, modified or repealed by the board established pursuant to this act.

45:9–37.34. Application of P.L.1978, c. 73 and P.L.1974, c. 46

The provisions of P.L.1978, c. 73 (C. 45:1–14 et seq.) and P.L.1974, c. 46 (C. 45:1–3.1 et seq.) shall apply to this act.

45:9–37.34a. Administration of physical modalities by employees of physical therapist

a. A physical therapist licensed pursuant to P.L.1983, c. 296 (C.45:9–37.11 et seq.) shall not use an employee to administer physical modalities to patients unless that employee is a health care provider licensed in this State.

As used in this subsection, physical modalities mean ultraviolet (B and C bands) and electromagnetic rays including, but not limited to, deep heating agents, microwave diathermy, shortwave diathermy, and ultrasound.

b. Nothing in this section shall be construed to prohibit any person licensed to practice in this State under any other law from engaging in the practice for which he is licensed.

NEW JERSEY REGULATIONS

CHAPTER 39A

STATE BOARD OF PHYSICAL THERAPY

SUBCHAPTER 1. AGENCY ORGANIZATION AND ADMINISTRATION

13:39A–1.1 Election of officers

The membership of the New Jersey Board of Physical Therapy shall once each year elect a chairperson, vice chairperson and a secretary. The chairperson shall have the responsibility to conduct all meetings unless, in his or her discretion, a delegation of that responsibility is made. In the absence of the chairperson and an express delegation of responsibility, the vice chairperson shall assume all of the duties of chairperson.

13:39A–1.2 Delegation of authority to act on emergent applications

The chairperson shall be authorized to hear and decide emergent applications by the Attorney General made pursuant to N.J.S.A. 45:1–22 for the temporary suspension of any license. The chairperson may also undertake such other interim action as may be required by circumstances arising prior to the next meeting date of the Board, provided that said action is subsequently presented to the Board for its review and action. Any decision made by the chairperson pursuant to this rule shall be placed on the agenda of the Board at its next regularly scheduled meeting for the purpose of its review. Insofar as it is practicable, the Board shall be provided with a transcript of the record made before the chairperson and the parties will be permitted to supplement the record with written submissions.

13:39A–1.3 Fees and charges

(a) The following fees shall be charged by the New Jersey State Board of Physical Therapy:

1. Application fee for Physical Therapist and
Physical Therapist Assistant.....\$125.00
2. Temporary license for Physical Therapist
and Physical Therapist Assistant.....\$ 75.00
3. Initial licensure fee, Physical Therapist:
If paid during first year of biennial
renewal period:.....\$110.00
If paid during second year of biennial
renewal period:.....\$ 55.00
Initial licensure fee, Physical Therapist
Assistant:
If paid during first year of biennial
renewal period:\$100.00
If paid during second year of biennial
renewal period:.....\$ 50.00
4. Biennial renewal fee:
Physical Therapist..... \$110.00
Physical Therapist Assistant.....\$100.00
5. Late renewal fee:..... \$100.00
6. Reinstatement fee.....\$150.00
7. Temporary visiting license pursuant to
N.J.S.A. 45:9-37.29(b) to practice on a temporary basis to assist in a medical emergency or to engage in
a special project or teaching assignment.....\$100.00
8. Duplicate license.....\$ 25.00
9. Duplicate wall certificate.....\$ 40.00
10. Certification of eligibility for examination
(for persons not yet seeking the
issuance of a temporary license).....\$ 25.00
11. Certification of licensure status.....\$ 40.00
12. Change of address fee.....\$ 25.00

13:39A–1.4 (Reserved)

SUBCHAPTER 2. PRACTICE AS A PHYSICAL THERAPIST AND PHYSICAL THERAPIST ASSISTANT

13:39A–2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Clinically supported” means that a licensee, prior to selecting, performing or ordering the administration of a diagnostic test, has:

1. Personally performed a physical examination, making an assessment of any current and/or historical subjective complaints, observations, objective findings, neurological indications;
2. Considered any and all previously performed tests relating to the patient’s medical condition and the results; and
3. Documented in the patient record positive and negative findings, observations and medical indications to justify the test.

“Diagnostic testing” means a medical service utilizing biomechanical, neurological, neurodiagnostic, radiological, vascular or any means, other than bioanalysis, intended to assist in establishing a physical therapy diagnosis, for the purpose of recommending a course of treatment for the tested patient to be performed consistent with the Physical Therapy Practice Act, N.J.S.A. 45:9–37.11 et seq., and this chapter.

“Direct supervision,” when in reference to a physical therapist assistant, means the presence of the supervising physical therapist on site, readily available to respond to any consequence regarding a patient’s treatment or a patient’s reaction to the treatment.

“Disability” means the inability to engage in age specific, gender related, or sex specific roles in a particular social context and physical environment.

“Functional limitations” means restrictions of the ability to perform a physical action, activity or task in an efficient, typically expected or competent manner.

“Impairment” means the loss or abnormality of physiological, psychological, or anatomical structure or function.

“Intervention” means interaction of the licensed physical therapist or licensed physical therapist assistant with the patient using various physical therapy procedures and techniques to produce changes in condition consistent with the patient evaluation and diagnosis.

“Physical therapy diagnosis” means a description placed on a group of signs and symptoms that are identified as a result of the examination and evaluative process. The purpose of the diagnostic determination is to allow the licensed physical therapist to select the appropriate physical therapy intervention(s) to initiate the most efficacious care for the purpose of achieving the patient’s goals.

“Physical therapy evaluation” means a review exclusively by a licensed physical therapist based on data and information collected during the examination and before any intervention. The evaluation reflects the chronicity and severity of the current patient problem and the possibility of multisystem and multisite involvement that may coexist with preexisting systemic conditions or diseases. The evaluation considers the level of the current impairment(s), functional limitation(s) and disability(ies), the living environment, potential discharge destination(s) and social support(s). A “physical therapy evaluation” does not include examining any person for the purpose of diagnosing any disease or organic condition.

“Physical therapy examination” means an inquiry conducted by a licensed physical therapist into the patient history, relevant systems review, and tests and measurements, which is conducted prior to any intervention. The history is an account of past and current health status. The system review is an examination that provides information about the general health of the patient that helps the licensed physical therapist determine physical therapy diagnosis, a prognosis and a plan of care. Tests and measurements are performed by the licensed physical therapist after review of the patient’s history and systems reviewed to elicit additional information.

“Physical therapy instruction” means the act of providing consultative, educational or advisory services to one or more individuals for the purpose of preventing or reducing physical dysfunction and disability that may lead to reduced functional abilities.

“Physical therapy practice” means the examining, evaluating, diagnosing of a patient by a licensed physical therapist and the treating and instructing of patients by a licensed physical therapist or licensed physical therapist assistant.

“Physical therapy treatment” means the interaction of the licensed physical therapist with the patient using various physical therapy procedures and techniques to produce changes in the condition consistent with the patient’s dysfunction, disability, or level of function and consistent with the patient’s projected outcome as a result of physical therapy intervention. When physical therapy instruction is provided to an individual as a part of his or her therapeutic interventions, the instruction must be considered part of physical therapy treatment.

“Physician direction” includes any of the following:

1. Written request or direction of a plenary licensed physician, or a dentist, podiatrist or chiropractor to the extent that the treatment prescribed is within the scope of his or her practice, or such other health care practitioner authorized to request and direct treatment;
2. Documentation of physician agreement for the patient’s treatment which includes countersigning of the physical therapist’s proposed plan of care;
3. Verbal direction, in person, via telephone, or electronically generated which shall be memorialized in writing within two weeks.

“Physician direction” does not include a patient’s representation that he or she has obtained a physician request or direction.

“Referral” means the forwarding of a patient for professional services by one health care professional to another health care professional or health care entity which provides or supplies professional service, or the request for establishment of a plan of care by a health care professional, including the provision of professional services or other health care devices.

13:39A–2.2 Authorized practice by a licensed physical therapist

(a) A licensed physical therapist may engage in the following activities and practices without physician direction:

1. Physical therapy examination, evaluation and diagnosis excluding electromyographic testing;
2. Physical therapy instruction;
3. Modification of physical therapy treatment initiated upon physician direction provided that the modification is consistent with that physician direction. If the physical therapist wishes to alter a therapeutic plan in a manner not consistent with the initial physician direction, contact shall be made with the patient’s physician for the purpose of obtaining additional direction.

(b) The licensed physical therapist shall continually monitor the patient’s response to care and modify the therapeutic intervention in a manner that is consistent with achieving the therapeutic goals.

(c) A physical therapist may bill a patient or third party payor for a diagnostic test in connection with a physical therapy evaluation provided:

1. The diagnostic testing is clinically supported and is specific to that individual patient’s impairments, functional limitations, or disability, and is consistent with physician direction;
2. The data sought to be gathered by such tests is relevant to the patient’s impairments, functional limitations, and disability, and will provide sufficient information to assist in the development of appropriate interventions, objectives and goals;
3. The appropriate documentation of the analysis of the data acquired from the testing, relevant to the patient impairment, functional limitation and/or disability, is recorded in the patient’s record; and
4. Any repeat or subsequent testing shall be for the purpose of substantiating the effectiveness of the physical therapy intervention. Testing intervals shall be determined by the licensed physical therapist and shall be consistent with the patient’s diagnosis, disability and impairment.

(d) A physical therapist shall not bill a patient or third party for diagnostic testing that lacks demonstrated medical value and a level of general acceptance by the relevant provider community and which fails to provide sufficient clinical data to alter the treatment plan.

(e) The following acts and practices shall be among those deemed to be outside the scope of physical therapy and upon proof that a licensee is engaging in such conduct he or she may be subject to disciplinary action:

1. The conducting of a breast examination;
2. The conducting of a pelvic internal examination, except internal evaluation of the pelvic floor musculature, upon specific direction from the referring licensed health care provider;
3. The taking of radiological studies; or
4. The representation of physical therapy treatment to be a cure or remedy for disease or organic condition unrelated to physical disability for which physical therapy services have been sought.

13:39A–2.3 Authorized practice by a licensed physical therapist assistant

(a) A licensed physical therapist assistant may initiate physical therapy treatment and engage in the practice of physical therapy at the direction of and under the direct supervision of a licensed physical therapist pursuant to physician direction given to the physical therapist. A licensed physical therapist assistant shall not initiate physical therapy treatment upon the direction of a physician or other authorized health care provider without the direct supervision of a physical therapist.

(b) A licensed physical therapist assistant shall document treatments in the patient record. The supervising physical therapist shall review and cosign contemporaneously the licensed physical therapist assistant's entries into the patient record.

(c) The licensed physical therapist assistant may participate in collecting data for the examination of the patient; however, any interpretation of the data or assessment shall be made by the supervising physical therapist.

(d) A licensed physical therapist assistant shall not perform a physical therapy examination, evaluation or diagnosis, develop a treatment plan, modify a treatment plan, or independently engage in physical therapy instruction, including, but not limited to, the recommendation of assistive devices and modifications of the patient's physical environment.

13:39A–2.4 Delegation by a physical therapist to unlicensed persons

(a) Licensed physical therapists may delegate to unlicensed persons routine tasks relating to the cleanliness and maintenance of equipment and the physical plant and the management of the business aspects of the practice and such other assignments with respect to patient care as may be specifically made by the physical therapist, including transporting the patient, positioning of the patient and assisting with the undressing and dressing of the patient.

(b) A physical therapist shall not authorize or permit an unlicensed person to engage in the following activities:

1. Advise, teach, or instruct patients concerning their condition or disability;
2. Carry out testing or evaluation procedures;
3. Make notations in the patient's record in relation to clinical treatment;
4. Place electrodes of any kind on the skin;
5. Administer any modalities.
6. Instruct and/or perform therapeutic exercise(s) and/or therapeutic activity(s); and
7. Provide therapeutic massage.

13:39A–2.5 Referral of patients by chiropractors

(a) Except as set forth in (b) below, a physical therapist shall not initiate physical therapy treatment unless the physical therapist has received the following information from the referring chiropractor in writing:

1. The name of the patient;
2. The printed name of the referring chiropractor, including office address and phone number;

3. The signature of the chiropractor and the date;
4. The purpose of referral; and
5. The spinal component of the patient's problem.

(b) A physical therapist may initiate physical therapy treatment based on verbally supplied information provided that the physical therapist ensures that such information is confirmed in writing within two weeks.

(c) After completing the physical therapy examination and evaluation, the physical therapist shall consult with the referring chiropractor. This consultation shall:

1. Clarify any divergent assessments that the referring chiropractor and physical therapist may have made regarding the patient's needs;
2. Coordinate treatment programs in the event that the patient receives concurrent chiropractic and physical therapy. Any such concurrent treatment programs shall be compatible; and
3. Jointly determine a schedule of additional consultation that will allow the physical therapist to monitor the patient's on-going plan of care.

(d) The physical therapist shall document the initial and on-going consultations with the referring chiropractor in the patient's record.

13:39A–2.6 (Reserved)

SUBCHAPTER 3. BUSINESS PRACTICES; PROFESSIONAL CONDUCT

13:39A–3.1 Patient records

(a) A licensed physical therapist shall prepare and maintain for each patient a contemporaneous, permanent patient record that accurately reflects the patient contact with the physical therapist whether in an office, hospital or other treatment, evaluation or consultation setting.

(b) A licensed physical therapist shall not falsify a patient's record.

(c) The patient record shall include, in addition to usual and customary information, at least the following information:

1. The full name, as it appears on the license, of the licensee who rendered care, identification of licensure status (PT or PTA), and license number. This information shall be legible and shall appear at least once on each page of the patient record;
2. Dates of all examination, evaluation, physical therapy diagnosis and treatment sessions;
3. The findings of the examination including test results;
4. The conclusion of the evaluation;
5. The determination of the physical therapy diagnosis;
6. Documentation of physician direction and memorialization of verbal and/or electronically submitted orders;
7. A plan of care establishing measurable goals of the intervention with stated time frames, the type of intervention, and the frequency and expected duration of intervention;
8. A contemporaneous note that accurately represents the services rendered during the treatment sessions including, but not limited to, the components of intervention and the patient's response to intervention;
9. Progress notes in accordance with stated goals at a frequency consistent with physical therapy diagnosis, evaluative findings and changes in the patient's conditions;
10. The signature or initials and license number of the licensee who rendered care. If the licensee chooses to sign by means of initials, his or her complete signature and license number shall appear at least once on every page;
11. Changes in the treatment plan which shall be documented contemporaneously and supported by physician concurrence;

12. Communication with other health professionals relative to the patient's care;

13. A discharge summary which includes the reason for discharge from and outcome of physical therapy intervention relative to established goals at the time of discharge; and

14. Pertinent legal document(s).

(d) Patient records shall be maintained for at least seven years from the date of the last entry, unless another agency or entity requires the records to be kept for a longer time.

13:39A–3.2 Use of personal or other computer to prepare patient records

(a) A licensee who prepares a patient record maintained solely on a personal or other computer shall use a write-protected program which:

1. Contains an internal permanently activated date and time recordation for all entries;

2. Automatically prepares a back-up copy of the file; and

3. Is designed in such manner that, after the licensee "signs" by means of a confidential personal code ("CPC"), the entry cannot be changed in any manner.

(b) The licensee shall include in the patient record at least two forms of identification; for example, name and record number of the patient or any other specific identifying information.

(c) The licensee shall finalize or "sign" the entry by means of a CPC. Where more than one individual is authorized to make entries into the computer file of any patient record, the licensee responsible for the entry shall assure that each such person obtains a CPC and uses the program in the same manner.

(d) The licensee shall generate a hard copy of the complete patient record upon request.

13:39A–3.3 Release of patient record

(a) A licensed physical therapist shall provide one copy of the patient's record of physical therapy treatment within 15 days of a written request by the patient or any person whom the patient has designated to receive that record.

(b) Licensed physical therapists may require a record request to be in writing and may charge a fee for the reproduction of records, which shall be no greater than \$1.00 per page or \$100.00 for the entire record, whichever is less. (If the record requested is less than 10 pages, the licensee may charge up to \$10.00 to cover postage and the miscellaneous costs associated with retrieval of the record.) If the patient requests a summary in lieu of the actual record, the charge for the summary shall not exceed the cost that would be charged for the actual record.

(c) If the patient or a subsequent treating health care professional is unable to read the treatment record, either because it is illegible or prepared in a language other than English, the licensed physical therapist shall provide a transcription at no cost to the patient or the person requesting the record.

(d) Where the patient has requested the release of a professional treatment record or a portion thereof to a specified individual or entity, in order to protect the confidentiality of the records, the licensed physical therapist shall:

1. Secure and maintain a current written authorization, bearing the signature of the patient or an authorized representative;

2. Assure that the scope of the release is consistent with the request; and

3. Forward the records to the attention of the specific individual or entity identified and mark the material "Confidential."

(e) A licensed physical therapist shall not withhold or delay providing a record because the patient failed to pay for services rendered.

13:39A–3.4 Financial arrangements with clients and third party payors

(a) Fees for physical therapy services shall be reasonable and commensurate with fees of physical therapists offering like services or intervention in the geographic area and shall be in accordance with the provisions of N.J.A.C. 13:39A–3.6 prohibiting excessive fees.

(b) Prior to the initiation of physical therapy, the licensed physical therapist or the licensed physical therapist's designee shall explain to the patient in an understandable manner the financial arrangements. The information provided to the patient shall include, but not be limited to:

1. The fee for services or the basis for determining the fee to be charged;
2. Whether the licensee will accept installment payments or assignment of benefits from a third party payor;
3. That insurance coverage may not be available in all circumstances; and
4. The financial consequences, if any, of missed sessions.

(c) A licensed physical therapist shall not require a patient or a third party payor to pay:

1. A fee for preparing an insurance claim form;
2. Interest on an unpaid account unless the patient has been notified of this policy, in writing, prior to the initiation of physical therapy treatment;
3. A full or partial fee for unkept appointments unless the patient has been notified of this policy, in writing, prior to the initiation of physical therapy treatment;
4. A fee for any physical therapy examination, evaluation, intervention or other services not documented in a patient's permanent record in a manner consistent with N.J.A.C. 13:39A-3.1(a); or
5. A fee for any free services offered pursuant to N.J.A.C. 13:39A-7.2.

(d) A licensed physical therapist shall provide a copy of a written fee schedule to any interested person upon request.

(e) A licensed physical therapist shall include on all bills submitted to a patient or third party payor the licensee's license number.

13:39A-3.5 Display of notice of licensure; notification of availability of fee information

(a) Every licensee shall conspicuously display his or her biennial renewal certificate and the following notices in a public area in any office or health care facility at which the licensee practices physical therapy:

1. "Physical therapists and physical therapist assistants are licensed by the Board of Physical Therapy, an agency of the Division of Consumer Affairs. Any member of the public may notify the Board of any complaint relative to the practice conducted by a physical therapist or physical therapist assistant. The Board address is: Division of Consumer Affairs, Board of Physical Therapy, Post Office Box 45014, 124 Halsey Street, Newark, New Jersey 07101, Tel: (973) 504-6455."

2. "INFORMATION ON PROFESSIONAL FEES IS AVAILABLE TO YOU ON REQUEST."

(b) A licensee shall not alter, deface or obscure the information on the biennial renewal certificate in any manner including, but not limited to, the licensee's address.

13:39A-3.6 Prohibition on excessive fees; overutilization

(a) A licensee shall not charge an excessive fee for services. A price is excessive when, after review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the price is so high as to be manifestly unconscionable or overreaching under the circumstances.

(b) Factors which may be considered in determining whether a price is excessive include, but are not limited to, the following:

1. The time and effort required;
2. The novelty and difficulty of the professional intervention;
3. The skill required to perform the intervention properly;
4. Any requirements or conditions imposed by the patient or by the circumstances;
5. The nature and length of the professional relationship with the patient;

6. The nature and circumstances under which the services were provided (for example, emergency, home visit).

(c) A licensed physical therapist shall not provide intervention or conduct testing which in light of the patient's history and findings are unwarranted and unnecessary.

(d) A licensed physical therapist shall not charge a fee to a patient or a third party payor for an intervention or other physical therapy which is unwarranted and unnecessary.

(e) Charging an excessive fee shall constitute professional misconduct within the meaning of N.J.S.A. 45:1-21(e) and may subject the licensee to disciplinary action.

13:39A-3.7 Notification of change of address; service of process

(a) All licensees shall notify the Board, in writing, within 30 days of any change in the address on file with the Board and shall specify whether the address is a residence or employment address.

(b) Service of an administrative complaint or other process initiated by the Board, the Attorney General or the Division of Consumer Affairs at the address on file with the Board shall be deemed adequate notice for the commencement of any inquiry or disciplinary proceeding.

(c) All licensees shall, within 30 days of receiving a notice of disciplinary action taken against the licensee in another jurisdiction, report to the Board in writing his or her receipt of such notification.

13:39A-3.8 Violative acts; professional misconduct

(a) The following acts or practices shall be among those deemed to be violative of N.J.S.A. 45:9-37.11 et seq., and to constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e):

1. Accepting, or agreeing to accept, from any person, firm or corporation any fee, commission, rebate, gift or other form of remuneration for prescribing, ordering or promoting the sale of a device, appliance or other item or service; except that nothing in this section shall preclude a licensed physical therapist from accepting a product or commodity which can be used as a sample by patients, provided that the physical therapist does not charge the patient for such items;

2. (Reserved)

3. Charging any patient a fee for making a referral to a physician or other health care professional authorized to direct the initiation of physical therapy, for the purpose of obtaining clearance for physical therapy. Nothing in this section shall preclude a physical therapist from charging a patient for a physical therapy examination and evaluation conducted prior to referral;

4. Using, or permitting the use of, his or her professional education degree, title, or license in connection with the rendition of services which are outside the scope of physical therapy practice;

5. Representing services as therapeutic, or permitting the representation of services as therapeutic, when, although the services are within the licensee's scope of practice, no therapeutic outcome is expected; for example, educational activities, preventative sports conditioning, fitness/wellness programs, etc. Nothing herein shall preclude a physical therapist from using or permitting the use of his or her professional education degree, title or license in connection with educational, preventative or other appropriate activities or from accepting reasonable fees or payment for such activities, provided that no claim of therapeutic outcome is made or charged for;

6. Rendering an intervention when, in the exercise of his or her professional judgment, the physical therapist may deem such treatment to be unnecessary. The physical therapist shall notify the referring professional in writing that treatment is to be terminated and the reason(s) for such termination;

7. Aiding or abetting the unlicensed practice of physical therapy;

8. Falsifying or altering any patient records for the purpose of obtaining payment for services which were not rendered;

9. Authorizing the submission of any bill for professional services which were not rendered, or which were rendered only for the purpose of obtaining additional reimbursement;

10. Failure by a licensed physical therapist to assure that any bills for services rendered under his or her professional license accurately represents the services rendered and that charges submitted for services rendered

by a physical therapist or physical therapist assistant are based solely upon the services reflected in the patient record; or

11. Failure to produce a hard copy of a complete patient record upon request.

13:39A–3.9 Identification of licensees

All licensees shall conspicuously wear an identification tag using the term “physical therapist” or “physical therapist assistant,” as appropriate, whenever acting in that capacity.

13:39A–3.10 Sexual misconduct

(a) The purpose of this section is to identify for licensees of the State Board of Physical Therapy conduct which shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

“Licensee” means any person licensed to engage in practice as a physical therapist or physical therapist assistant as regulated by the State Board of Physical Therapy.

“Patient” means any person who is the recipient of physical therapy evaluation, instruction or treatment rendered by a licensee.

“Patient-therapist relationship” means a relationship between a physical therapist or a physical therapist assistant and a patient wherein the licensee owes a continuing duty to the patient to render physical therapy services consistent with his or her training and experience.

“Sexual contact” means the knowing touching of a person’s body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee’s own prurient interest or for sexual arousal or gratification. “Sexual contact” includes, but is not limited to, the imposition of a part of the licensee’s body upon a part of the patient’s body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient’s body into or near the genital, anal or other opening of the other person’s body. “Sexual contact” does not include the touching of a patient’s body which is necessary during the performance of a generally accepted and recognized physical therapy procedure.

“Sexual harassment” means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a licensee’s activities or role as a provider of physical therapy services, and that either: is unwelcome, is offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. “Sexual harassment” may consist of a single extreme or severe act or of multiple acts and may include, but is not limited to, conduct of a licensee with a patient, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee.

“Spouse” means the husband, wife or fiancée of the licensee or an individual involved in a long-term committed relationship with the licensee. For purposes of the definition of “spouse,” a long-term committed relationship means a relationship which is at least six months in duration.

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient-therapist relationship. The patient-therapist relationship is ongoing for purposes of this section, unless:

1. Physical therapy is terminated by way of written notice to the patient and is documented in the patient record; or
2. The last physical therapy was rendered more than three months ago.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-therapist relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that discussion is directly related to a proper physical therapy purpose. Such discussion shall not include disclosure by the licensee of his or her own sexual relationships.

(f) A licensee shall provide privacy and examination conditions which prevent the exposure of the unclothed body of the patient. Appropriate draping measures shall be employed to protect patient privacy.

(g) A licensee shall not engage in sexual harassment either within or outside of the professional setting.

(h) A licensee shall not engage in any other activity which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or which is for the sexual arousal, or sexual gratification of the licensee or patient or which constitutes an act of sexual abuse.

(i) Violation of any of the prohibitions or directives set forth in (c) through (h) above shall constitute professional misconduct pursuant to N.J.S.A. 45:1–21(e).

(j) Nothing in this section shall be construed to prevent a licensee from rendering physical therapy to a spouse, providing that the rendering of such physical therapy is consistent with accepted standards of physical therapy and that the performance of physical therapy is not utilized to exploit the patient spouse for the sexual arousal or sexual gratification of the licensee.

(k) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
2. The licensee is in love with or held affection for the patient.

SUBCHAPTER 4. UNLICENSED PRACTICE

13:39A–4.1 Acts amounting to unlicensed practice

(a) For the purpose of the Board's construction of N.J.S.A. 45:9–37.10, the following acts or practices shall be deemed to be the unlicensed practice of physical therapy:

1. Offering physical therapy examination, evaluation, instruction or intervention by means of advertisement or solicitation by any person who does not hold a license as a physical therapist, a physical therapist assistant, M.D., D.O., D.P.M., D.D.S. or D.M.D. (to the extent authorized by N.J.S.A. 45:5–7), even if that person has been instructed or directed to offer that treatment or render that treatment by a physical therapist, physical therapist assistant, M.D., D.O., D.P.M., D.D.S. or D.M.D.;

2. The use of the words physical therapy, physical therapist, physiotherapy, physiotherapist or such similar words or their related abbreviations in connection with the offering of physical therapy agents measures and services which are utilized in the rendition of physical therapy treatment by any person who does not hold a license as a physical therapist, a physical therapist assistant, an M.D., D.O., D.P.M., D.D.S. or D.M.D. even if that person has been instructed or directed to use such terminology by a physical therapist, physical therapist assistant, M.D., D.O., D.P.M., D.D.S. or D.M.D.;

3. Billing any patient or third party payor for “physical therapy” or “physiotherapy” in connection with the use of physical therapy agents, measures or services, if the individual who personally rendered the services does not hold a license to practice physical therapy, medicine, surgery, dentistry or podiatry; or

4. Offering physical therapy agents, measures or services by means of advertisement or solicitation by a limited licensee of the Board of Medical Examiners unless the context of such offering or advertisement reveals that such services are directly related to the practice authorized by the Board of Medical Examiners and the wording of the offering would not lead members of the general public to assume that the advertiser is authorized to practice physical therapy or physiotherapy without limitation.

13:39A–4.2 Aiding and abetting unlicensed practice

It shall be unlawful for a licensee to aid or assist any person engaging in any of the practices identified at N.J.A.C. 13:39A–4.1.

SUBCHAPTER 5. CREDENTIALING OF APPLICANTS

13:39A–5.1 Educational credentials for applicants for licensure as physical therapists

(a) Applicants for physical therapy examination shall submit to the Board satisfactory proof of:

1. Graduation from a program in physical therapy which has been approved for the education and training of physical therapists by an accrediting agency recognized by the Council on Post-secondary Accreditation and the United States Department of Education; or

2. With respect to foreign educated applicants for licensure as physical therapists, the applicant shall demonstrate satisfactory evidence of graduation from a physical therapy program that is substantially equivalent to a physical therapy program approved for the education and training of physical therapists by an accrediting agency recognized by the Council on Post-secondary Accreditation and the United States Department of Education. The applicant shall present evidence of successful completion of course work with a minimum of a bachelor's degree in physical therapy awarded by an institution which is approved by the foreign applicant's Ministry of Education/Health for the education of physical therapists. The applicant shall have completed a minimum of 120 semester hour credits, with a minimum of 50 semester hour credits in general education and a minimum of 60 semester hour credits in professional education. General education courses shall include, but not be limited to, mathematics, physical science which includes a one semester course in physics and a one semester course in chemistry, biological science, humanities, social science and behavioral science. The professional component of the program shall include, but not be limited to, basic health sciences, clinical sciences, clinical education and related professional courses.

3. Applicants for licensure as a physical therapist who have completed their education subsequent to January 1, 2002 shall demonstrate satisfactory evidence of graduation from a physical therapy program that is substantially equivalent to a physical therapy program approved for the education and training of physical therapists by an accrediting agency recognized by the Council on Post Secondary Accreditation and the United States Department of Education. The applicant shall demonstrate successful completion of coursework beyond the bachelor's degree leading to a degree or certificate in physical therapy being awarded by an institution which is approved by that country's Ministry of Education/Health for the education of physical therapists. The applicant's transcript shall show a bachelor's degree with a minimum of 120 semester hour credits, with a minimum of 60 semester hour credits of professional education, 29 of which must be completed post-baccalaureate. The transcript must show general education which shall include, but not be limited to, mathematics, physical science which included a two semester class in physics and a two semester course in chemistry, biological science, humanities, social science and behavioral science. The professional component of the program shall include, but not be limited to, basic health services, clinical sciences, clinical education and related professional courses.

(b) Proof of eligibility for licensure in the foreign country where the requisite education was obtained shall be submitted to the Board by the credentialing agency on behalf of all foreign educated applicants seeking licensure in this State.

13:39A-5.2 Examination standards for applicants for licensure as physical therapists

(a) Applicants for licensure as physical therapists submitting satisfactory proof of educational attainment as set forth in N.J.A.C. 13:39A-5.1 shall be admitted to take the written examination administered by the Board or such standardized examination as the Board may select pursuant to N.J.S.A. 45:9-37.25.

(b) Upon satisfactory passage of such examination, an applicant shall be deemed eligible for licensure. Satisfactory passage of the examination shall be attained upon receipt of a score of at least 600 based on a scale of 200 to 800.

(c) Applicants shall pass all portions of the examination at the same sitting. Applicants shall not be permitted to retake only those portions of the examination which previously have been failed.

13:39A-5.3 Educational credentials for applicants for licensure as physical therapist assistants

Applicants for examination as physical therapist assistants shall submit to the Board satisfactory proof of graduation from a physical therapist assistant program which has been approved for the education and training of physical therapist assistants by an accrediting agency recognized by the Council on Post-secondary Accreditation and the United States Department of Education.

13:39A-5.4 Examination standards for applicants for licensure as physical therapist assistants

(a) Applicants for licensure as physical therapist assistants submitting satisfactory proof of educational attainment as set forth in N.J.A.C. 13:39A-5.3 shall be admitted to take the written examination administered by the Board or such standardized examination as the Board may select pursuant to N.J.S.A. 45:9-37.25.

(b) Upon satisfactory passage of such examination, an applicant shall be deemed eligible for licensure. Satisfactory passage of the examination shall be attained upon receipt of a score of at least 600 based on a scale of 200 to 800.

(c) Applicants shall pass all portions of the examination at the same sitting. Applicants shall not be permitted to retake only those portions of the examination which previously have been failed.

13:39A–5.5 Endorsement

Applicants possessing a valid license issued by another state may be deemed eligible for licensure in New Jersey without examination if the criteria for licensure in the other state are deemed by the Board to be substantially equivalent to those required in New Jersey and the applicant has not previously failed the examination administered by the Board. Nothing herein shall preclude the Board, in its discretion, from deeming an applicant, who possesses a license issued by another jurisdiction, who has failed the examination administered by the Board, to be eligible for licensure.

13:39A–5.6 Recognition of scores on standardized examinations administered in other states

The Board will recognize standardized examination scores obtained as a result of an examination administered in another state or jurisdiction in satisfaction of its examination requirement provided that the applicant has obtained a score of at least 600 on a scale of 200 to 800 and has passed all portions of the examination at the same sitting.

13:39A–5.7 Language comprehension requirements

(a) An applicant for licensure as a physical therapist or a physical therapist assistant who has received his or her physical therapy training in a country other than the United States of America, the United Kingdom, the Republic of Ireland, Canada except Quebec Province, Australia, New Zealand, Jamaica, Nigeria or Ghana, shall submit to the Board evidence of attainment of a score of at least 213 on the Test of English as a Foreign Language (TOEFL) examination, which test shall have been taken within the two years immediately preceding the filing of the application for licensure in New Jersey.

(b) The TOEFL examination score shall be submitted with the application for licensure.

(c) The TOEFL requirement may be waived for applicants who have received their training in countries other than those listed in (a) above upon submission of a written request to the Board which demonstrates good cause for the granting of the waiver. In such cases the Board may also require a personal interview with the applicant.

13:39A–5.8 Re-examination of applicants for licensure as physical therapists and physical therapist assistants

An examinee who fails the examination on his first attempt, may retake the examination once in this state, without filing another application, provided he is rescheduled for the examination within two years of his initial date of application and he pays the required examination fee to the Board. If any examinee fails the examination on his second attempt, in the Board's discretion, he may be required to re-submit an application before being rescheduled for another examination.

13:39A–5.9 Non-appearance at examination

Failure to appear at any scheduled examination shall be deemed a failure of the examination unless, in the Board's discretion, good cause such as health, accident, disability or military service has been shown for the applicant's failure to appear.

SUBCHAPTER 6. TEMPORARY LICENSES FOR PHYSICAL THERAPISTS

13:39A–6.1 Temporary license

(a) Any person deemed eligible to sit for the initial examination for licensure as a physical therapist or a physical therapist assistant, may apply for the issuance of a temporary license to practice physical therapy under the supervision of a New Jersey licensed physical therapist by indicating such on the initial application for examination.

(b) At the time of submission of the initial application for licensure in this State, the candidate shall disclose in writing any physical therapy licensure examinations taken in other jurisdictions which the applicant has failed.

13:39A–6.2 Expiration of temporary license

(a) A temporary license issued to a person who has applied for licensure automatically expires 120 days from the date of issuance or upon notification by the Board of the candidate's failure of the examination in this State or the failure of the same standardized examination taken in another state.

(b) Upon expiration of the temporary license, the candidate shall not practice physical therapy and shall refrain from practicing physical therapy thereafter until the person successfully attains licensure.

13:39A–6.3 Renewal; consequences of second failure; notice of examination in another jurisdiction

(a) The holder of a temporary license who has failed in this State or in any other state the first examination for which he or she has been scheduled, may have his or her temporary license renewed by the Board for a period not to exceed 120 days, by completing a renewal application form and paying the renewal fee as set forth in N.J.A.C. 13:39A–1.3.

(b) If the holder of a temporary license fails a subsequent examination in this State or the same standardized examination in any other state, within the 120 day period, he or she shall immediately surrender the temporary license to the Board.

(c) Holders of temporary licenses shall notify the Board of their intention to take the examination in other states or jurisdictions and the results of those out-of-State examinations shall be reported to the Board within 10 days of receipt of notification of failure.

13:39A–6.4 Temporary visiting licenses

Any person having made application to the Board pursuant to N.J.S.A. 45:9–37.29(b) for the issuance of a temporary license to practice physical therapy in this State on a temporary basis to assist in a medical emergency or to engage in a special project or teaching assignment relating to the practice of physical therapy, may be issued a temporary visiting license without examination, which shall remain valid for a period not to exceed one year, provided that said person can demonstrate to the Board that he or she is licensed, registered or otherwise authorized to engage in the practice of physical therapy in another state or jurisdiction and that permitting his or her practice in this State would not be inconsistent with the public interest. A temporary visiting license, upon its expiration, may be renewed, at the discretion of the Board, for an additional year. Any holder of a temporary visiting license is required to give notice to this Board if his or her authority to engage in the practice of physical therapy is revoked, suspended or otherwise limited by any state, agency or authority.

SUBCHAPTER 7. SUPERVISION OF PHYSICAL THERAPIST ASSISTANTS

13:39A–7.1 Supervision requirement; physical therapist assistant

(a) A licensed physical therapist assistant shall work only under the direct supervision of a licensed physical therapist pursuant to the provisions of this subchapter.

(b) The maximum physical therapist to physical therapist assistant ratio shall be one physical therapist to two physical therapist assistants at any one time.

(c) The supervising physical therapist shall retain responsibility for the physical therapy care of the patient being treated by the physical therapist assistant. The physical therapist assistant shall be responsible for patient care within the limits of his or her scope of practice.

(d) In the event of a change of the supervising physical therapist, the subsequent supervisor shall assume responsibility for the ongoing supervision of any physical therapist assistant(s) providing care to the patient and shall become the designated supervisor.

(e) In an emergency situation which causes the unanticipated absence of the supervising physical therapist, a licensed physical therapist assistant may continue to render services to only those patients for which the licensed physical therapist assistant has previously participated in the intervention for established plans of care not to exceed the regularly scheduled operational hours of that particular day.

(f) Every effort shall be made by the licensed physical therapist and/or the licensed physical therapist assistant to obtain direct supervision in the care described in (e) above.

13:39A–7.2 Responsibilities of designated physical therapist supervisor

(a) The physical therapist supervisor shall be in the same building or, where physical therapy is rendered in several contiguous buildings, in one of the contiguous buildings, while the physical therapist assistant is rendering care. The physical therapist supervisor shall be constantly available through electronic communications for consultation or for recall to the area where the licensed physical therapist assistant is rendering care.

(b) The supervising physical therapist's professional judgment shall ultimately determine the safe provision of physical therapy services being rendered by the physical therapist assistant(s).

(c) The supervising physical therapist shall cosign the physical therapist assistant's notes contemporaneously with the services rendered.

(d) The supervising physical therapist shall review the plan of care with the physical therapist assistant:

1. Before a physical therapist assistant provides care to a patient for the first time;
2. Before the physical therapist assistant implements a new or revised plan of care; and
3. On or before the patient's next visit in the event of a change in the designated supervisor.

(e) At least once every 30 days after initial review of a new or revised plan of care with the licensed physical therapist assistant, the supervising physical therapist shall document in the patient record that he or she has reviewed the patient's progress and plan of care with the assistant, including the dates when those reviews took place. Such documentation may be incorporated into progress notes written by the physical therapist and the physical therapist assistant and need not require separate or additional notes.

13:39A–7.3 Responsibilities of physical therapist assistant

(a) A physical therapist assistant shall not render nor continue to render care unless he or she has obtained ongoing direction from his or her designated supervisor.

(b) A physical therapist assistant shall obtain the signature of the designated physical therapist supervisor indicating that the designated supervisor reviewed the plan of care and the date when that review took place. The supervising physical therapist's signature in the record shall serve as evidence that the plan of care has been reviewed by the supervising physical therapist.

(c) At least once every 30 days after the initial review of a new or revised plan of care with the supervising physical therapist, the physical therapist assistant shall document in the patient record that the patient's progress and plan of care were reviewed with the supervising physical therapist including the dates when those reviews took place. Such documentation may be incorporated into progress notes or treatment notes written by the physical therapist and the physical therapist assistant and need not require separate or additional notes.

SUBCHAPTER 7A. SUPERVISION OF TEMPORARY LICENSED PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

13:39A–7A.1 Supervision requirement; temporary licensed physical therapist; temporary licensed physical therapist assistant

(a) A temporary licensed physical therapist or temporary licensed physical therapist assistant shall work only under the direct supervision of a licensed physical therapist pursuant to the provisions of this subchapter.

(b) At no time shall one licensed physical therapist supervise more than two persons holding a temporary license.

(c) The supervising physical therapist shall be responsible for the physical therapy care of the patient being treated by the temporary licensed physical therapist or temporary licensed physical therapist assistant.

(d) The temporary licensed physical therapist or temporary licensed physical therapist assistant shall be responsible for patient care within the limits of his or her scope of practice.

(e) In the event of a permanent change of the supervising physical therapist, upon notification to the Board, the subsequent supervisor shall assume responsibility for the ongoing supervision of any temporary licensed physical therapist(s) or temporary licensed physical therapist assistant(s) providing care to the patient and shall become the designated supervisor.

(f) In the absence of the supervising physical therapist, a physical therapist or physical therapist assistant holding a temporary license in the State of New Jersey shall not provide services.

13:39A–7A.2 Responsibilities of designated supervisor

(a) The physical therapist supervisor shall be subject to those responsibilities set forth in N.J.A.C. 13:39A–7.2, as they relate to the supervision of temporary licensed physical therapists and/or temporary licensed physical therapist assistants.

(b) Cosignature of a temporary licensed physical therapist's or temporary licensed physical therapist assistant's patient record entries by a physical therapist other than the designated supervisor shall not be considered indicative of ongoing supervision.

13:39A–7A.3 Responsibilities of temporary licensed physical therapist; temporary licensed physical therapist assistant

(a) A temporary licensed physical therapist or temporary licensed physical therapist assistant shall not render care unless he or she has obtained ongoing direction from his or her designated supervisor.

(b) A temporary licensed physical therapist or temporary licensed physical therapist assistant shall obtain the signature of the designated supervisor indicating that the designated supervisor reviewed the plan of care and the date when that review took place. The physical therapist's signature in the record shall serve as evidence that the plan of care has been reviewed by the supervising physical therapist.

(c) At least once every 30 days after the initial review of a new or revised plan of care with the supervising physical therapist, the temporary licensed physical therapist or temporary licensed physical therapist assistant shall document in the patient record that the patient's progress and plan of care was reviewed with the supervising physical therapist, including the dates when those reviews took place. Such documentation may be incorporated into progress notes or treatment notes written by the physical therapist and the temporary licensed physical therapist or the temporary licensed physical therapist assistant and need not require separate or additional notes.

SUBCHAPTER 7B. (RESERVED)

SUBCHAPTER 8. ADVERTISING

13:39A–8.1 Advertising and solicitation practices

(a) The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.

1. The term "advertisement" means any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media which directly or indirectly induces or attempts to induce any person or

entity to purchase or enter into an agreement to purchase services, treatment, or goods related thereto from a Board licensee.

2. “Board licensee” means any individual holding a valid license issued by the New Jersey Board of Physical Therapy.

3. The term “clinical specialist” means a licensed physical therapist who has demonstrated advanced clinical knowledge and skills by successfully completing an American Board of Physical Therapy Specialties (ABPTS) clinical specialist program and has passed a written examination in one of the physical therapy specialty areas.

4. The term “electronic media” shall include, but not be limited to, radio, television, telephone, facsimile machine, or computer.

5. The term “fee schedule” refers to the fees charged for services or goods offered by a physical therapist.

6. The term “graphic representation” means the use of drawings, animations, clinical photographs, dramatizations, music or lyrics.

7. The term “print media” shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, fliers or other publications, the content of which is disseminated by means of the printed word.

8. “Routine professional service” refers to a service which a physical therapist, physical therapist assistant or professional association routinely performs.

(b) A licensee may provide information to the public by advertising in print or electronic media.

(c) A licensee who engages in the use of advertising which contains any of the following shall be deemed to have engaged in professional misconduct:

1. Any statement, claim or format including, but not limited to, a graphic representation which is false, fraudulent, misleading or deceptive;

2. Any misrepresentation of a material fact;

3. The suppression, omission or concealment of any material fact under circumstances which the licensee knows or should have known is improper or prevents a prospective patient from making a full and informed judgment on the basis of the information set forth in the advertisement;

4. Any claim that the service performed or the materials used are superior to that which is ordinarily performed or used in the profession;

5. Any promotion of professional service that the licensee knows or should know is beyond the licensee’s ability to perform;

6. A technique or communication which appears to intimidate, exert undue pressure or to unduly influence a prospective patient or consumer;

7. Any personal testimonial attesting to the quality or competence of service or treatment by a licensee involving medical or technical assessments that are beyond the patient’s competency to assess, or any testimonial not in compliance with N.J.A.C. 13:39A–8.3;

8. The communication of any fact, data or information that may personally identify a patient without the patient’s signed written permission obtained in advance;

9. An offer to pay, give or accept a fee or other consideration to or from a third party for the referral of a patient;

10. Any print, language or format that directly or indirectly obscures a material fact; or

11. Any guarantee of results from any procedure.

(d) Any violations of (e) through (i) below shall be deemed professional misconduct.

(e) The Board may require a licensed physical therapist to substantiate the truthfulness of any assertion or representation set forth in an advertisement.

(f) A licensee shall not engage, either directly or through the use of any agent, employee or representative, in solicitation of a prospective patient or a consumer. This subsection shall not prohibit a licensed physical therapist from offering services through materials provided to a community service organization which makes known the availability of all professional services listed; nor shall it prohibit the offering of services by a licensed physical

therapist to any bona fide representative of prospective patients including, but not limited to, employers, labor union representatives or insurance carriers.

(g) Advertising making reference to or setting forth fees shall be limited to that which contains a stated fee schedule for specifically described routine professional services or goods offered by licensees.

1. A licensee who advertises a fee shall disclose all relevant and material variables and considerations that are ordinarily included in such a service so that the fee will be clearly understood by prospective patients or consumers.

2. In the absence of such disclosure referred to in (g)1 above, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement specifically delineates the additional services contemplated and the fee to be charged therefor.

(h) The time period during which an advertised fee will remain in effect shall be set forth on the face of the advertisement. In the absence of such disclosure, the effective period shall be deemed to be 30 days from the date of the advertisement's final publication.

(i) Any licensed physical therapist advertising certification in a specialty area shall possess certification by American Board of Physical Therapy Specialties or other Board-recognized national certifying body.

13:39A–8.2 Advertising free or discounted services; required disclosures

(a) An advertisement offering a fee reduction shall state the reduced fee and the physical therapist's usual fee for each service for which a reduction is advertised. The usual fee shall be the fee charged for the advertised service for a period of not less than 90 days prior to the advertised reduction.

(b) All offers of free services or discounts shall include a statement of the specific charges for all associated or reasonably anticipated services which are not included in the offer of free or discounted services. If the discount or free service does not apply to all services to be rendered, the advertisement shall specify any associated or reasonably anticipated services which are not included.

(c) Except for those services specifically excluded in the advertisement offering free services, the physical therapist shall not charge for any service whatsoever rendered during a period of 72 hours from the time the free service was rendered.

13:39A–8.3 Testimonial advertising

(a) All testimonials involving a specific or identifiable procedure shall truthfully reflect the actual experience of the patient.

(b) The licensee shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial. The failure to do so, if required by the Board, may be deemed professional misconduct.

(c) Where an advertiser directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a clear, legible and readable manner in any advertisement as follows: "COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL."

13:39A–8.4 Minimum content

(a) A licensee shall include the following in all advertisements and professional representations (other than an office entry sign), including advertisements in a classified directory, business cards and professional stationery:

1. The name, identification of licensure and license number of at least one principal of the corporation; and

2. The street address and telephone number of the practice.

13:39A–8.5 Use of professional credentials and certifications

(a) A licensee shall accurately and objectively represent his or her competence, education, training and experience.

(b) A licensee shall use the designation “physical therapist” or “physical therapist assistant” or the abbreviation “PT” or “PTA” in conjunction with the use of his or her name and license number. Academic degree designations may be placed after the name and the title.

(c) An advertisement that includes information on professional credentials shall contain the academic degrees attained related to the practice of physical therapy and shall refer only to degrees obtained from accredited academic institutions.

13:39A–8.6 Advertising by a business entity offering physical therapy services

(a) A licensee who uses or participates in the use of any form of public communication relating to a business entity offering physical therapy services shall include in that communication the name of the person holding an ownership interest in the advertising entity and the professional license held by that person. If the entity is owned by more than four persons, the notice need only include the names of officers in that entity and the licenses they hold.

(b) The responsibility for the form and content of any advertisement offering services or goods by a licensee shall be jointly and severally that of each licensed physical therapist who is a principal, partner or officer of the firm or entity identified in the advertisement.

13:39A–8.7 Advertising record retention

(a) The licensee shall retain, for a period of three years from the date of initial publication or dissemination, a copy of every advertisement appearing in print media as well as a video or audio tape of every advertisement communicated by electronic media. The licensee shall indicate on all advertisements in his or her possession the date and place of publication.

(b) Documentation relating to the use of testimonials shall be retained for a period of three years from the date of last use of the testimonial. Documentation shall include, but not be limited to, the name, address and telephone number of the testimonial giver and the type and amount or value of compensation, if any.

CHAPTER 45C UNIFORM REGULATIONS

SUBCHAPTER 1. LICENSEE DUTY TO COOPERATE AND TO COMPLY WITH BOARD ORDERS

13:45C–1.1 Applicability, scope and definitions

(a) This subchapter shall apply to all licensees of any board, committee or sub-unit within the Division of Consumer Affairs.

(b) For the purpose of this subchapter, “licensee” shall mean any licensee, permittee, certificate holder or registrant of:

1. The Division of Consumer Affairs;
2. Any professional or occupational licensing board within the Office of Professional/Occupational Boards and any committee, or other subunit of a board or committee located within the Division;
3. The Office of Consumer Protection; or
4. The Legalized Games of Chance Control Commission.

13:45C–1.2 Licensee’s duty to cooperate in investigative inquiries

(a) A licensee shall cooperate in any inquiry, inspection or investigation conducted by, or on behalf of, a board, the Director or the licensee’s licensing agency into a licensee’s conduct, fitness or capacity to engage in a

licensed profession or occupation where said inquiry is intended to evaluate such conduct, fitness or capacity for compliance with applicable statutory or regulatory provisions.

(b) A licensee's failure to cooperate, absent good cause or

bona fide claim of a privilege not identified in N.J.A.C. 13:45C-1.5 as unavailable, may be deemed by the board, the Director, or the licensing agency to constitute professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) or the agency's enabling act and thus subject a licensee to disciplinary action pursuant to N.J.S.A. 45:1-21(h) or the agency's enabling act.

13:45C-1.3 Specific conduct deemed failure to cooperate

(a) The following conduct by a licensee may be deemed a failure to cooperate and, therefore, professional or occupational misconduct and grounds for suspension or revocation of licensure:

1. The failure to timely respond to an inquiry to provide information in response to a complaint received concerning licensee conduct;

2. The failure to timely provide records related to licensee conduct;

3. The failure to attend any scheduled proceeding at which the licensee's appearance is directed. In the event that a licensee elects to retain counsel for the purpose of representation in any such proceeding, it shall be the licensee's responsibility to do so in a timely fashion. The failure of a licensee to retain counsel, absent a showing of good cause therefor, shall not cause an adjournment of the proceeding;

4. The failure to timely respond or to provide information requested pursuant to a demand under N.J.S.A. 45:1-18 or other applicable law or to provide access to any premises from which a licensed profession or occupation is conducted. Included within this paragraph shall be the failure to respond to any demand for statement or report under oath, the failure to permit the examination of any goods, ware or item used in the rendition of the professional or occupational service and the failure to grant access to records, books or other documents utilized in the practice of the occupation or profession;

5. The failure to answer any question pertinent to inquiry made pursuant to N.J.S.A. 45:1-18 or other applicable law unless the response to said question is subject to a

bona fide claim of privilege;

6. The failure to make proper and timely response by way of appearance or production of documents to any subpoena issued pursuant to N.J.S.A. 45:1-18 or as may otherwise be provided by law; or

7. The failure to provide to the Board, the Director or the licensing agency timely notice of any change of address from that which appears on the licensee's most recent license renewal or application.

13:45C-1.4 Failure to comply with Board orders as professional or occupational misconduct

The failure of a licensee to comply with an order duly entered and served upon the licensee or of which the licensee has knowledge shall be deemed professional or occupational misconduct.

13:45C-1.5 Unavailability of privileges in investigative or disciplinary proceedings

(a) In any investigative inquiry conducted pursuant to N.J.S.A. 45:1-18 or in any disciplinary proceeding conducted pursuant to N.J.S.A. 45:1-21, or as may otherwise be authorized by law, the physician-patient privilege, psychologist-patient privilege, marriage and family therapist-client privilege, professional counselor-client privilege, associate counselor-client privilege, social worker-client privilege and the alcohol and drug counselor-client privilege shall be unavailable.

(b) Any statements or records otherwise subject to a claim of the stated privileges which may be obtained by the Board, its agent or the Attorney General pursuant to N.J.S.A. 45:1-18 shall remain confidential and shall not be disclosed unless so ordered by a court of competent jurisdiction, the appropriate licensing board or the Office of Administrative Law in a contested case.

13:45C–1.6 Maintenance of and access to statements, records or other information that is subject to a privilege declared unavailable

(a) Any statements, records or other information which may be subject to any privilege declared unavailable in this subchapter shall be maintained in a secure place and manner by:

1. The evidence custodian within the Division of Consumer Affairs, Enforcement Bureau;

2. The professional or occupational licensing board and the committee or other subunit of a board or committee located within the Division which has a direct connection with, or a need for access to, the matter to which the statements, records or other information pertain; or

3. A Deputy Attorney General.

(b) Except as may be otherwise ordered as provided in the subchapter, access to statements, records or other information shall be afforded only to employees of the Attorney General, the Enforcement Bureau, or the Board or other subunit of the Division having a direct connection with, or a need for access to, the matter to which the statement, records or other information pertain.

(c) The statements, records or other information shall be retained only for the period of time during which an investigation remains open or until the completion of all administrative or judicial proceedings relating thereto, at which time they shall be returned to the licensee or other person from whom they were obtained. In the absence of such licensee or other person, the statements, records or other information shall be returned to the patient, where appropriate.

As of January 1, 2002

Internet - 4/9/02